

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY
James H. Hanson, Pro Hac Vice, Ind. Bar No. 08100-49
jhanson@scopelitis.com
Robert L. Browning, Pro Hac Vice, Ind. Bar No. 15128-49
rbrowning@scopelitis.com
R. Jay Taylor Jr., Pro Hac Vice, Ind. Bar No. 19693-53
jtaylor@scopelitis.com
10 West Market Street, Suite 1500
Indianapolis, IN 46204
(317) 637-1777
Fax: (317) 687-2414

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSUE SOTO, GHAZI RASHID, MOHAMED ABDELFATTAH, on Behalf of All Aggrieved Employees, All Others Similarly Situated, and the General Public,

CASE NO. 08-CV-0033-L-AJB

Plaintiffs,
vs.
DIAKON LOGISTICS (DELAWARE) INC., a
foreign corporation; and
DOES 1 through 50, inclusive,
Defendants.

CLASS ACTION

DIAKON LOGISTICS (DELAWARE) INC.,
Counterclaimant,

**JOINT MOTION TO CONTINUE
HEARING DATE ON DIAKON
LOGISTICS (DELAWARE), INC.'S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

vs.
JOSUE SOTO, Counterclaim Defendant.)

DIAKON LOGISTICS (DELAWARE) INC.,
Third-Party Plaintiff

vs.
SAYBE'S, LLC, ABDUL TRUCKING, INC.,
and RASHID TRUCKING, INC.,
Third-Party Defendants.

Defendant/Counterclaimant/Third-Party Plaintiff, Diakon Logistics (Delaware), Inc. (“Diakon”) and Plaintiffs Josue Soto, Ghazi Rashid and Mohamed Abdelfattah, by and through their respective counsel, respectfully request that this Court continue the hearing date on the

1 presently pending Motion to Dismiss First Amended Complaint presently scheduled for July 14,
2 2008 to the new hearing date of August 11, 2008, for the following reasons:

3 1. Diakon filed its Motion to Dismiss on May 5, 2008 (Docket Entry No. 36), setting
4 a hearing date of July 14, 2008.

5 2. Following the filing of Diakon's Motion to Dismiss, two additional Motions to
6 Dismiss were filed; specifically Plaintiffs filed in this action as Docket Entry No. 41, Plaintiffs'
7 Motion to Dismiss Amended Counterclaim as to Josue Soto Pursuant to Fed. R. Civ. P. 12(b)(6)
8 and Plaintiffs filed in this action as Docket Entry No. 45, Plaintiffs' Motion to Dismiss First
9 Amended Third Party Complaint of Diakon Logistics (Delaware), Inc. against Saybe's, LLC,
10 Abdul Trucking, Inc., and Rashid Trucking, Inc., pursuant to Fed. R. Civ. P. 12(b)(6).

11 3. The hearing date on both Motions to Dismiss filed by Plaintiffs has been set as
12 August 11, 2008 pursuant to an Order issued by this Court on June 25, 2008, Docket Entry No.
13 47.

14 4. The three pending motions address many similar legal and factual issues and it
15 would conserve both the resources of this Court and of the parties if the hearing date on Diakon's
16 motion is continued to August 11, 2008 so that Diakon's motion can be heard in conjunction
17 with Plaintiffs' two pending motions.

18 5. In consideration of Plaintiffs' consent to continue the hearing date on Diakon's
19 motion, Diakon has agreed to maintain the briefing schedule so that its reply brief to Plaintiffs'
20 opposition will remain as set, July 7, 2008.

21 WHEREFORE, Plaintiffs and Diakon respectfully request that the hearing on Docket
22 Entry No. 36, Diakon's Motion to Dismiss First Amended Complaint, be continued to August
23 11, 2008, to be held in conjunction with the hearing on Docket Entry No. 41, Plaintiffs' Motion
24 to Dismiss Amended Counterclaim as to Josue Soto Pursuant to Fed. R. Civ. P. 12(b)(6) and
25 Docket Entry No. 45, Plaintiffs' Motion to Dismiss First Amended Third Party Complaint of
26 Diakon Logistics (Delaware), Inc. against Saybe's, LLC, Abdul Trucking, Inc., and Rashid
27 Trucking, Inc., pursuant to Fed. R. Civ. P. 12(b)(6), and that the briefing schedule on Docket
28

1 Entry No. 36 be maintained so that Diakon's reply brief on the motion will be filed and served
2 no later than July 7, 2008.

3 Respectfully submitted:

4 Dated: July 2, 2008

5
6 SCOPELITIS, GARVIN, LIGHT, HANSON
7 & FEARY, LLP

8 By: /s/ Christopher C. McNatt, Jr.

9 Christopher C. McNatt, Jr.
10 Attorneys for Defendant, Counterclaimant,
11 and Third-Party Plaintiff Diakon Logistics
12 (Delaware), Inc.

13 Dated: July 2, 2008

14 EMGE & ASSOCIATES

15 By: /s/ Derek J. Emge

16 Derek J. Emge
17 Attorneys for Plaintiff, Josue Soto, Ghazi
18 Rashid, Mohamed Abdelfattah, On Behalf
19 of All Aggrieved Employees, All Other
20 Similarly Situated, and the General Public

21
22 CERTIFICATE OF SERVICE

23 I hereby certify that a copy of the foregoing has been served electronically via the court's
24 ECF system upon the following counsel of record, this 2nd day of July, 2008:

25 Todd J. Hilts
26 Law Office of Todd J. Hilts
27 2214 Second Avenue
28 San Diego, California 92101

Derek J. Emge
Emge & Associates
550 West C Street, Suite 1600
San Diego, California 92101

David A. Huch
Law Offices of David A. Huch
7040 Avenida Encinas, Suite 104
Carlsbad, California 92011

Issa Michael
The Michael Law Firm
1648 Union Street, Suite 201
San Francisco, California 94123

29
30 /s/ Christopher C. McNatt, Jr.
31 Christopher C. McNatt, Jr.